



JUDGMENT OF THE COURT

18 October 2010

(Failure by a Contracting Party to fulfil its obligations – Directive 2002/87/EC on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate)

In Case E-3/10,

EFTA Surveillance Authority, represented by Xavier Lewis, Director and Bjørnar Alterskjær, Deputy Director, Department of Legal & Executive Affairs, acting as Agents, Brussels, Belgium,

Applicant,

v

The Republic of Iceland, represented by Iris Lind Sæmundsdóttir, Legal Officer, Ministry for Foreign Affairs, acting as Agent, Reykjavik, Iceland,

Defendant,

APPLICATION for a declaration that, by failing to adopt, or to notify the EFTA Surveillance Authority of, the measures necessary to implement the Act referred to at point 31ea of Annex IX to the EEA Agreement, i.e. Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council, as adapted to the EEA Agreement by Protocol 1 thereto, within the time-limit prescribed, the Republic of Iceland has failed to fulfil its obligations under Article 32 of that Act and Article 7 of the EEA Agreement.

THE COURT,

composed of: Carl Baudenbacher, President, Thorgeir Örlygsson and Henrik Bull (Judge-Rapporteur), Judges,

Registrar: Skúli Magnússon,

having regard to the written pleadings of the parties and the written observations of the European Commission,

having decided to dispense with the oral procedure,

gives the following

Judgment

I The application

- 1 By application lodged at the Court Registry on 19 May 2010, the EFTA Surveillance Authority (hereinafter “ESA”) brought an action under the second paragraph of Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (hereinafter the “SCA”), for a declaration that, by failing to adopt, or to notify ESA of, the national measures necessary to implement the Act referred to at point 31ea of Annex IX to the EEA Agreement, within the time-limit prescribed, the Republic of Iceland has failed to fulfil its obligations under Article 32 of that Act and Article 7 EEA. The Act referred to is Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council, as adapted by Protocol 1 to the EEA Agreement.

II Facts and pre-litigation procedure

- 2 Decision 104/2004 of 9 July 2004 of the EEA Joint Committee amended Annex IX to the EEA Agreement by adding Directive 2002/87/EC to point 30e (now: point 31ea) of that Annex. The Decision entered into force on 1 August 2005 and the time limit for EFTA States to adopt the measures necessary to implement the Act and to notify ESA thereof expired on the same date.
- 3 On 30 November 2005, the Government of Iceland notified ESA of the measures considered to implement the Act fully into the Icelandic legislation. In a letter dated 4 September 2006, ESA invited the Government of Iceland to submit, by 15 October 2006, a table of correspondence regarding the implementation of the Act. The requested table was not submitted within the time period and it eventually became clear that Iceland had not implemented the Act in full.
- 4 In a letter of 29 January 2008, ESA invited the Government of Iceland to explain by 15 February 2008 which parts of the Act had not been implemented, and informed the Icelandic Government of ESA’s intentions to consider whether the status of the implementation of the Act in Iceland could be maintained as “fully

implemented”. Not having received any response from the Government of Iceland, on 8 April 2008, ESA changed on its own initiative its assessment of the status of implementation of the Act in Iceland.

- 5 At a meeting held in Reykjavik 22 May 2008, the Government of Iceland informed ESA that the Icelandic Financial Supervisory Authority was assessing a proposal for rules implementing non-implemented parts of the Act, which were expected to come into force soon. ESA followed up the meeting with a letter inviting the Government of Iceland to submit a table of correspondence for the Act.
- 6 In the absence of any information from the Government of Iceland as to the implementation of the Act, ESA decided to initiate proceedings under Article 31 SCA and, on 10 September 2008, a letter of formal notice was sent to the Government of Iceland, stating that Iceland had failed to fulfil its obligations under Article 3 EEA and Articles 2 and 6 SCA by not providing the information requested by ESA. The Government of Iceland was invited to submit its observations on the matter within one month of receipt.
- 7 Not having received any response from the Government of Iceland regarding the implementation of the Act, ESA delivered, on 25 February 2009, a reasoned opinion concluding that, by failing to provide ESA with the information it had requested, Iceland had failed to fulfil its obligations under Article 3 EEA and Articles 2 and 6 SCA. The Government of Iceland was requested to take the measures necessary to comply with the reasoned opinion within two months.
- 8 The Government of Iceland responded to the reasoned opinion on 20 April 2009, informing ESA that the Act had been implemented into Icelandic legislation, with the exception of four provisions, Articles 2(6), 24(1) and 28(5)–(6). ESA was also informed that a Bill implementing the outstanding provisions was pending before the Icelandic Parliament and that Iceland would send notice of full implementation of the Act no later than autumn 2009.
- 9 Based on the above, ESA concluded that Iceland had not implemented Articles 2(6), 24(1) and 28(5)–(6). Having received no other information allowing it to conclude that national measures had been taken to ensure full implementation of the Act, ESA decided to initiate proceedings under article 31 SCA and, on 9 September 2009, a letter of formal notice was sent to the Government of Iceland, setting out ESA’s conclusions on the matter and inviting Iceland to submit its observations within two months of receipt.
- 10 ESA neither received any observations from the Government of Iceland nor was it in possession of any information enabling it to conclude that the measures necessary to ensure full implementation of the Act had been taken. ESA therefore delivered, on 9 December 2009, a reasoned opinion concluding that Iceland had failed to fulfil its obligations under the Act and under Article 7 of the EEA Agreement. The Government of Iceland was requested to take the measures necessary to comply with the reasoned opinion within two months.

- 11 By letter of 25 February 2010, the Government of Iceland provided its observations on the reasoned opinion and informed ESA that a bill implementing the remaining four provisions of the Act had been submitted to the Icelandic Parliament awaiting further parliamentary proceedings.

III Procedure before the Court

- 12 ESA lodged the present application at the Court Registry on 19 May 2010. The statement of defence from the Government of Iceland was received on 29 June 2010. On 15 July 2010, ESA submitted a reply to the defence lodged by Iceland.
- 13 After having received the express consent of the parties, the Court, acting on a report from the Judge-Rapporteur, decided to dispense with the oral procedure.

IV Arguments of the parties

- 14 The application is based on one plea in law, namely that by failing to adopt, or to notify ESA of, the national measures necessary to implement the Act referred to at point 31ea of Annex IX to the EEA Agreement, i.e. Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council, within the time-limit prescribed, the Republic of Iceland has failed to fulfil its obligations under Article 32 of that Act, as included in the EEA Agreement, and under Article 7 EEA Agreement.
- 15 It is undisputed by the Government of Iceland that the necessary national implementation measures were not adopted within the time-limit prescribed. Moreover, in its statement of defence, Iceland does not dispute the order sought by ESA. The Government of Iceland nevertheless requests the Court to order each party to bear its own costs of the proceedings. No reasons are submitted to substantiate this request.
- 16 As a factual observation, the Government of Iceland has informed the Court that an Act on Insurance Activities was adopted by Althingi on 1 June 2010, to implement in full Directive 2002/87/EC.
- 17 In its reply to Iceland's statement of defence, ESA contests the request for sharing of costs in this case. It is submitted that according to the general rule under Article 66(2) of the Rules of Procedure, Iceland must be ordered to bear the costs and that none of the exceptions in Article 66(3) apply.

V Findings of the Court

- 18 Article 3 EEA imposes upon the Contracting Parties the general obligation to take all appropriate measures, whether general or particular, to ensure fulfillment of the obligations arising out of the EEA Agreement (see Case E-3/08 *EFTA*

Surveillance Authority v The Republic of Iceland [2008] EFTA Ct. Rep. 308, at paragraph 15). Under Article 7 EEA, the Contracting Parties are obliged to implement all acts referred to in the Annexes to the EEA Agreement, as amended by decisions of the EEA Joint Committee.

- 19 The obligation to implement also follows from Article 32 of Directive 2002/87/EC, according to which implementation by the EC Member States is required not later than 11 August 2004. As Decision 104/2004 of the EEA Joint Committee did not set a separate EEA time limit for the implementation of the Directive into national law, Iceland was obliged to adopt the national measures necessary to implement the Directive by the date on which that Decision entered into force, namely 1 August 2005.
- 20 The question of whether an EFTA State has failed to fulfil its obligations must be determined by reference to the situation in that State as it stood at the end of the period laid down in the reasoned opinion (see Case E-3/08 *EFTA Surveillance Authority v Iceland*, cited above, at paragraph 18). It is undisputed that Iceland did not adopt those measures before the expiry of the time-limit given in the reasoned opinion.
- 21 It must therefore be held that, by failing to adopt, within the prescribed time-limit, the national measures necessary to implement the Act referred to at point 31ea of Annex IX to the EEA Agreement, i.e. Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council, as adapted by Protocol 1 to the EEA Agreement, Iceland has failed to fulfil its obligations under Article 32 of that Act and Article 7 EEA.

VI Costs

- 22 The Government of Iceland has requested the Court to order each party to bear its own costs. The Court is left to address this claim even though no pleas, whether in law or in fact, have been submitted in support of this claim. In the light of ESA's submissions and considering the facts of the case, however, the Court finds it clear that the claim for sharing of costs is without basis in law.
- 23 Under Article 66(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the EFTA Surveillance Authority has requested that the Republic of Iceland be ordered to pay the costs and the latter has been unsuccessful, and since none of the exceptions in Article 66(3) apply, the Republic of Iceland must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

- 1. Declares that, by failing to adopt, within the time-limit prescribed, the measures necessary to implement the Act referred to at point 31ea of Annex IX to the EEA Agreement, i.e. Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council, as adapted to the EEA Agreement by Protocol 1 thereto, the Republic of Iceland has failed to fulfil its obligations under Article 32 of that Act and under Article 7 of the EEA Agreement.**
- 2. Orders the Republic of Iceland to bear the costs of the proceedings.**

Carl Baudenbacher

Thorgeir Örlygsson

Henrik Bull

Delivered in open court in Luxembourg on 18 October 2010

Skúli Magnússon
Registrar

Carl Baudenbacher
President